

**United States Postal Service and Enrique A. Betancourt. Case 21-CA-21487(P)**

16 April 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

Upon a charge filed by Enrique A. Betancourt, an individual, 11 August 1982, the General Counsel of the National Labor Relations Board issued a complaint 24 September 1982 against the Company, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Copies of the charge and complaint and notice of hearing were served on the parties.<sup>1</sup>

The complaint alleges that, on 9 August 1982, the Respondent, acting through Bruce Lane, a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(2) and (13) of the Act, at its San Diego facility, prohibited employees from distributing material protected by Section 7 of the Act in the Respondent's lunchroom. On 12 October 1982 the Respondent filed its answer, admitting in part and denying in part the allegations in the complaint.

On 17 January 1983 the General Counsel filed a Motion for Summary Judgment. On 19 January 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In support of its Motion for Summary Judgment, the General Counsel contends that there are no issues of fact which require a hearing inasmuch as the Respondent's answer admits all the procedural and jurisdictional allegations of the complaint. The Respondent admits that Bruce Lane is, and has been at all times material, a supervisor and agent of the Respondent, although it denies in its answer that Lane prohibited employees from distributing material protected by Section 7 of the Act in the Respondent's lunchroom. However, the General Counsel contends that the Respondent, in its statement of position in response to the charge, admissible against the Respondent under Rule 801(d)(2)(D) of the Federal Rules of Evidence,

<sup>1</sup> On 17 September 1982 the Respondent submitted to the General Counsel a written statement of position in response to the charge.

clearly admits that, on 9 August 1982, Lane did, in fact, deny an employee's request to distribute copies of a leaflet, in the Respondent's employee lunchroom, opposing certain proposed changes in the constitution of a labor organization which represents certain of the Respondent's employees. The General Counsel also contends that, as the Respondent is bound by this admission contained in its statement of position, there are no issues of fact which need be decided through a hearing before an administrative law judge, notwithstanding the Respondent's answer to the complaint.

The Respondent contends in its statement of position that the wages, hours, and conditions of all postal clerks are set forth in the 1981-1984 national collective-bargaining agreement between the Postal Service, the Respondent, and the American Postal Workers Union (APWU). That agreement also includes as a party the National Association of Letter Carriers. Article 22 of that agreement, entitled "Bulletin Boards," provides for the distribution of union literature on literature racks and ad posting on union bulletin boards.<sup>2</sup> The Respondent further contends that Betancourt, the Charging Party, should have sought permission from the appropriate union officials to so post or distribute his message concerning union matters.

The Respondent contends that, based on the record and pleadings now before the Board, the General Counsel's motion should not be granted because there are genuine issues as to material facts in this case, and the General Counsel is not entitled to judgment as a matter of law. Therefore, the Motion for Summary Judgment should be denied, and the case be remanded for a hearing before an administrative law judge of the Board. In the event the Board finds no such material issues of fact, the Respondent submits that its Cross-Motion for Summary Judgment should be granted by the Board as the Postal Service is entitled to judgment as a matter of law.

In support of its view, the Respondent contends that, on 9 August 1982, Betancourt spoke with Bruce Lane, a labor relations representative for the

<sup>2</sup> Art. 22 reads:

**ARTICLE 22**

**BULLETIN BOARDS**

The Employer shall furnish separate bulletin boards for the exclusive use of each Union party to this Agreement, subject to the conditions stated herein, if space is available. If sufficient space is not available, at least one will be provided for all Unions signatory to this Agreement. The Unions may place their literature racks in swing rooms, if space is available. Only suitable notices and literature may be posted or placed in literature racks. There shall be no posting or placement of literature in literature racks except upon the authority of officially designated representatives of the Union.

San Diego Post Office. Betancourt asked permission to distribute a handbill in the employees' lunchroom at the San Diego Post Office. He showed Lane a copy of the handbill. He gave no indication that he had sought and been denied permission from an officially designated representative of the APWU to post his literature on the APWU bulletin boards or distribute it on APWU literature racks. Lane denied Betancourt's request on the ground that the literature in issue was covered by article 22 and should have been posted and/or distributed pursuant to the provisions of article 22.

Betancourt's handbill displayed the following heading: "UNION DUES—UP, UP, AND AWAY—." The handbill indicated that union dues could go "skyhigh" if proposed changes in the constitution, proposed by the local general president, Bill Sims, were ratified by the membership. According to the handbill, the proposed changes with a ballot were to be mailed to each member before local officers attended the Biennial Convention. Although the general president had refused to release the details of the proposed changes, insiders had indicated that there would be a proposal to make three full-time union officers in lieu of the single general president; that the salary of the general president be increased and a proposal for the salary of the two new union officers; that there would be a proposal to raise the union dues; and that there would also be a proposal to elect a general president every 3 years rather than every 2 years. Each proposal was accompanied by a recommendation that the employees vote "NO." It was pointed out that most of the proposals would result in a dues increase. The flyer was distributed by "The Rank And File Action Committee." A listing of the committee's officers was included.

The final paragraph of the flyer reads as follows:

Local union elections are scheduled to be held in March of next year. The Rank And File Action Committee (RAFAC) has been formed to support and to promote candidates for office who are responsive to the needs of the general membership. Many union members feel a sense of frustration because it seems that the union isn't doing enough to protect their rights. The answer is that a grassroots movement is needed to replace ineffective union officers. If you would like to help please write to: RAFAC P.O. Box 86324 San Diego, CA 92138. We need your support!

It is well established that the Board has, on numerous occasions, found that conduct similar to that engaged in by the Respondent is violative of Section 8(a)(1) of the Act.

In *McDonnell Douglas Corp.*,<sup>3</sup> the Board agreed with the administrative law judge's finding that the distribution of handbills by the "Fight Dues Raise" group of employees was an activity sufficiently related to their working conditions and bore such a reasonable connection to matters affecting the interests of the employees as to come within the protection of Section 7 of the Act. The Board found that the dues issue, which was the target of FDR's activities, was directly related to the employees' employment relationship and their working conditions, and that activity, namely the distribution of handbills on company premises during their non-working time and in nonworking areas, was protected. Citing the Supreme Court's decision in *NLRB v. Magnavox Co. of Tennessee*, 415 U.S. 322 (1974), the Board held that parties to a collective-bargaining agreement cannot waive an employee's Section 7 rights.<sup>4</sup> The Board also found that the FDR group of employees were acting in concerted opposition to the incumbent union on a matter directly affecting their employment conditions. It was the Board's view that their Section 7 right to distribute literature to their fellow employees in order to solicit their support could not be waived by the union or the company. The Board concluded that the respondent's security and/or production needs did not justify its restraint of employees seeking to distribute Section 7 matter during their non-working time and in nonworking areas.

In a later case, *Ford Motor Co. (Rouge Complex)*,<sup>5</sup> the Board noted that in its *Magnavox*<sup>6</sup> decision, and subsequent cases, it had distinguished between the distribution of union institutional literature and literature which pertained to the employees' selection or rejection of a labor organization as their collective-bargaining representative or other matters related to the exercise by employees of their Section 7 rights. The Board concluded that the literature therein which pertained to the employees' concerns over the possibility of layoffs and the union's efforts to avert that possibility clearly fell within the category of other conditions of employment, that the employees' solicitation and distribution of literature was protected concerted and/or union activity within the meaning of Section 7, and that the union could not effectively waive the employees' right to engage in such activities under the principles of *Magnavox*.<sup>7</sup>

<sup>3</sup> 210 NLRB 280 (1974).

<sup>4</sup> In *Magnavox*, the Supreme Court noted that the place of work is a place uniquely appropriate for dissemination of views concerning the bargaining representative and the various options open to the employees.

<sup>5</sup> 233 NLRB 698 (1977).

<sup>6</sup> 195 NLRB 265 (1972).

<sup>7</sup> See also *Transcom Lines*, 235 NLRB 1163 (1978), where the literature found to be protected by the Board opposed the local union's policies

*Continued*

In view of the Respondent's admission that Bruce Lane, a supervisor and an agent, prohibited employee Betancourt from distributing literature which was published by the Rank and File Action Committee (RAFAC), appealing to employees not to support changes in the constitution promoted by the general president of the Union on grounds that such action may result in higher dues increases, and that there was a need for a grassroots movement to replace ineffective union officers, the allegations of the complaint are deemed admitted and are found to be true. Inasmuch as all material issues have been admitted by the Respondent's answer, and as the Respondent's contentions concerning the necessity of an administrative law judge's decision have been found to be lacking in merit, we find that there are no issues properly triable in this proceeding and therefore no further hearing is required or warranted. Accordingly, we shall grant the General Counsel's Motion for Summary Judgment and deny the Respondent's Cross-Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function. The facility involved in this proceeding is located in San Diego, California. At all times material, the Board has had jurisdiction over this matter by virtue of section 1209 of the Postal Reorganization Act, 39 U.S.C. 1201-09. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

About 9 August 1982 the Respondent, by its supervisor and agent, Bruce Lane, prohibited employees, including the Charging Party Enrique A. Betancourt, from distributing material concerning proposed changes in the constitution and bylaws of the American Postal Workers Union, San Diego, California, Area Local, AFL-CIO, in the Respondent's lunchroom.

and officers and proposed that members challenge the incumbent officers in an upcoming intraunion election; and *Harper-Grace Hospitals*, 264 NLRB 663 (1982), where the Board rejected the employer's contention that employees should be denied the right to distribute literature on the premises because of a provision in the collective-bargaining agreement which gave them the right to post material on the union bulletin board.

Accordingly, we find, that the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

By prohibiting its employees from distributing literature which was related to the exercise of their Section 7 rights, the Respondent has interfered with, restrained, and coerced its employees in the exercise of those rights in violation of Section 8(a)(1) of the Act.

#### THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action as set forth below designed to effectuate the purposes of the Act.

As we have found that the Respondent prohibited employees from distributing material which is related to their exercise of the rights guaranteed them by Section 7 of the Act, we shall order that the Respondent inform the employees of their right to engage in such protected activity.

#### ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, San Diego, California, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Prohibiting employees from distributing literature which is related to their exercise of the rights guaranteed them by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Rescind its rule or policy prohibiting employees from distributing literature relating to the exercise of statutorily protected rights.

(b) Post at its facility in San Diego, California, copies of the attached notice marked "Appendix."<sup>8</sup>

<sup>8</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT prohibit our employees from distributing literature which concerns the exercise of any of the rights guaranteed them by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed employees by Section 7 of the Act.

WE WILL rescind our rule or policy prohibiting employees from distributing literature relating to the exercise of their rights protected by the Act.

UNITED STATES POSTAL SERVICE